



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 8, 2015

Ms. Yasmine Berry-Aaji
831 S. 200 E.
Fowler, IN 47944

Re: Formal Complaint 15-FC-164; Alleged Violation of the Access to Public Records Act by the Benton County Commissioner, County Surveyor and County Drainage Board

Dear Ms. Berry-Aaji,

This advisory opinion is in response to your formal complaint alleging the Benton County Commissioner ("Commissioner"), the Benton County Surveyor and the Benton County Drainage Board ("Board"), (collectively "Benton County") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The County has responded to your complaint via counsel, Mr. John Wright, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 15, 2015.

BACKGROUND

Your complaint dated May 15, 2015 alleges Benton County violated the Access to Public Records Act and the Open Door Law.

On September 14, 2014, you sent a letter asking the Benton County Commissioners to learn "in who's name Mr. Dave Fisher applied for funds in order to have Mr. Deno (Mr. Kakani's tenant) cut down our trees and remove our fence along and within our boundary." You received a response on September 29, 2014, which apparently gave you the information you wanted and also stated you should have received a letter explaining the clean-up before it occurred.

You allege you did not receive any statement from the County Surveyor which declared your privately owned and financed ditch a public ditch. The response to your complaint from the Commissioner includes documents which attempt to provide evidence the ditch dates back to a public project in 1908 and was reconstructed with public funds in 1998.



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Additionally, you contacted the County Commissioners on a date not provided in your complaint and asked them for documentation, but the complaint does not state what documentation you requested.

On June 3, 2015, the County responded to your complaint. Benton County notes much of your complaint does not pertain to any request for public records nor does the complaint specify which records are sought. The County notes the initial communication with Benton County in September 2014 did not contain a request for public records. The County contends there was no denial of access because there was never a request for records.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The administration of Benton County is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the County’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for public records must be made with reasonable particularity. See Ind. Code § 5-14-3-3. This does not mean you must state with pinpoint accuracy the records being sought, however, it must give the public agency an idea you are in fact seeking a tangible document and give the agency an indication which document(s) you seek.

Ind. Code § 5-14-5-10 provides a complainant must file a formal complaint within thirty (30) days of the denial of a record or thirty (30) days after the complainant receives notice a meeting was held. You do not identify a meeting date or a public records denial in your complaint occurring thirty (30) days prior to the filing of your complaint, as a substantial portion of your communication with the County took place in 2014.

Much of your complaint falls outside the scope of this Office and pertains to matters of local governance as opposed to public access. The County’s public agencies must accommodate your request to inspect and copy documents during the agency’s business hours if you request them with “particularity” and if any documents do indeed exist. For



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your reference, the information provided in the Indiana Public Access Handbook found on the Office of the Public Access Counselor's website (www.in.gov/pac) contains more guidance on requesting public records.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that Benton County has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Wright, Esq.